

**DEPARTMENT OF PARKS AND RECREATION
OFF-HIGHWAY MOTOR VEHICLE RECREATION DIVISION
GRANTS AND COOPERATIVE AGREEMENTS PROGRAM REGULATIONS**

INITIAL STATEMENT OF REASONS

INTRODUCTION

Public Resources Code (PRC) Section 5090.01 et seq., also known as the Off-Highway Motor Vehicle Recreation Act of 2003 (Act), as amended, governs off-highway motor vehicle grants and cooperative agreements with cities, counties, districts, federal agencies, federally recognized Native American tribes, nonprofit organizations, educational institutions, and State agencies. The Grants and Cooperative Agreements Program (Program) is administered by the Off-Highway Motor Vehicle Recreation (OHMVR) Division within the Department of Parks and Recreation (Department). The Program allows the State to assist eligible agencies and organizations to develop, maintain, expand and manage high-quality off-highway vehicle (OHV) recreation areas, roads, trails, and other facilities, while responsibly maintaining the wildlife, soils, and habitat in a manner that will sustain long-term OHV recreation. Assistance is provided in the form of project-specific grant funding.

The objective of the proposed action is to make improvements to the existing Program via amendments to the Program Regulations and documents incorporated by reference. Program regulations appear in the California Code of Regulations (CCR) Title 14, Division 3, Chapter 15, Section 4970.00 et seq. The proposed revisions would provide new definitions and important program dates, clarify required documentation for specific projects, identify new guidelines for eligible/ineligible costs, insert new and revise current language, and modify documents incorporated by reference. The intent of the proposed regulation revisions are to reduce confusion for applicants and to ensure public funds are being spent wisely and within the State's best interest. Applicants and program administrators would benefit from improvements to the several documents incorporated by reference. These actions would allow the Department to more efficiently support motorized recreation and motorized access to non-motorized recreation throughout the state.

**SPECIFIC PURPOSE AND NECESSITY FOR EACH PROPOSED
AMENDMENT OF THE REGULATIONS**

The following provides the specific purpose and necessity for each proposed amendment to sections in CCR Title 14, Division 3, Chapter 15, § 4970.00 – 4970.26.

4970.00. – APPLICATION OF CHAPTER

Specific Purpose

Section 4970.00 is amended to reflect current, applicable Program dates for proposed revisions.

Necessity

The amendment to Section 4970.00 is necessary to maintain regulatory consistency.

4970.01 – DEFINITIONS**Specific Purpose**

Section 4970.01 is amended to change language for two existing definitions to reduce confusion, and to add one new defined term. The section is also re-lettered to maintain alphabetical order.

Necessity

The amendment to Section 4970.01(u) is necessary to define the term “Good Standing”, which appears in the Payment Request section.

The amendment to Section 4970.01(aa) is necessary to reduce confusion of applicants by altering the language in the current definition to specify what activities would be considered as indirect expenses towards project implementation and completion. In previous grant cycles applicants have submitted project cost estimates and payment requests for activities they believed were indirect and, as a result of their misinterpretation, had to significantly alter their planned projects. Under the proposed revision applicants would have a more clear understanding of what the OHMVR Division considers indirect costs thus reducing unnecessary time spent interpreting regulations for administrators.

The amendment to Section 4970.01(bb) is necessary to change language to include land managers of non-public agencies. Under this proposal applicants could apply for grant funding to perform projects/activities on private land that provides for OHV recreation opportunities. With the proposed revision important education messages and safety training could be conveyed to OHV users who seek recreational opportunities provided by privately owned parks, thus expanding OHV safety and riding opportunity throughout the state.

4970.04 – GRANTS PROGRAM CYCLE**Specific Purpose**

Table 2 is amended to identify the deadline for submitting a public comment.

Necessity

The amendment to Section 4970.04 is necessary to inform applicants about the time-zone specific deadline for public comments to be submitted to avoid confusion and to allow for optimal public participation. Under this revision a member of the general public, interested in providing comments, outside the

Pacific Time zone would be made aware of the absolute cut off for comment submittal.

4970.05 – GENERAL APPLICATION REQUIREMENTS

Specific Purpose

Section 4970.05(e)(4) is amended to provide clarity for specific program dates for public comment submission.

Necessity

The amendment to Section 4970.05(e)(4) is necessary to inform applicants about when the time-zone specific deadline for public comments submission to avoid confusion and allow for optimal public participation. Under this proposal language would also be slightly altered to reflect that the OHMVR Division must *receive* public comments instead of previously *requiring* applicants to submit public comments by the cited due date. The language revision would allow for the OHMVR Division to conduct a more thorough review to ensure regulatory compliance. This proposed revision is also necessary to ensure regulations remain consistent.

Specific Purpose

Section 4970.05(f)(1) is amended to clarify general application requirements regarding matching funds.

Necessity

The amendment to section 4970.05(f)(1) is necessary to avoid confusion on behalf of applicants. In previous grant cycles applicants have attempted to meet the requirement for matching funds for activities and deliverables that were assessed by administrators to be not directly related to Project Application deliverables which would lead to entire or partial project disqualification. Under the proposed revision to the regulatory language applicants will have a better understanding of what activities or deliverables are to be expected that would qualify as matching funds.

Specific Purpose

Section 4970.05(l) is amended to correct language identifying which applicants are required to obtain and submit written permission from a land manager.

Necessity

The amendment to Section 4970.05(l) is necessary to provide clear direction to applicants. Past grant cycles required Educational Institutions and Nonprofit organizations to submit written permission from land managers. The amendment to Section 4970.05(l) will require any applicant proposing work on land, which they do not own, to submit a written letter of permission from that land manager. This revision is warranted due to an increase in local government agencies partnering with federal land managers. The revision would in turn ensure that all partnerships are unanimously reaching agreements on specific needs and expectations of the project.

Specific Purpose

Section 4970.05(l)(2) is amended to ensure project agreements between land managers and applicants meet time specific date range prior to grant submission.

Necessity

The amendment to Section 4970.05(l)(2) is necessary to avoid confusion regarding what would be considered current for required documentation. Providing applicants a clear timeframe for dates would be considered acceptable for a written permission from land managers will reduce miscommunication between applicants, land managers and grant administrators. The proposed revision would also ensure to the OHMVR Division that project agreements remain relevant and continue to meet current on the ground needs as well as regulatory compliance and the public interest.

Specific Purpose

Section 4970.05(m) is amended to allow local governments and District applicants more flexibility to apply for OHMVR Division grants.

Necessity

The amendment to Section 4970.05(m) is necessary to improve the grant application process for local governments and districts by requiring a governing body resolution to receive a grant instead of requiring a resolution to be able to apply. In previous grant cycles some local government applicants have struggled to obtain permission from a governing body year after year for each new grant cycle. The proposed revisions would allow for these applicants to apply more often and meet program specific deadlines more easily. The amendment would also allow local governments ample time to prepare and assess their needs prior to application deadlines.

4970.06.1. California Environmental Quality Act (CEQA) Requirements**Specific Purpose**

Section 4970.06.1(b) is amended to ensure regulatory compliance.

Necessity

The amendment to Section 4970.06.1(b) is necessary for the OHMVR Division to publicly address and acknowledge the importance and significance of completing all required actions of the CEQA review process. The proposed revision would also thoughtfully remind applicants that the OHMVR Division is thoroughly committed to ensuring that all necessary CEQA reviews are completed before any public funding is distributed for project deliverables.

Specific Purpose

Section 4970.06.1(c)(1) is amended to ensure regulatory compliance.

Necessity

The amendment to Section 4970.06.1(c)(1) is necessary to deliberately point out to applicants that the OHMVR Division is responsible for assuring that all activities included in a

project proposal undergo the CEQA review process. In past grant cycles applicants have not been able to provide all necessary documentation for all aspects of a proposed project. Under the proposed revision applicants would be made aware what documentation is to be expected so that ample time is provided to gather information to ensure a complete CEQA review process.

Specific Purpose

Section 4970.06.1(d)(1) is amended to ensure regulatory compliance.

Necessity

The amendment to Section 4970.06.1(d)(1) is necessary to deliberately point out to applicants that the OHMVR Division is responsible for assuring that all activities included in a project proposal undergo the CEQA review process for federal applicants. The proposed revision would also ensure consistency throughout program regulations.

Specific Purpose

Section 4970.06.1(d)(1)(A) is amended to reduce confusion for federal applicants regarding regulatory compliance.

Necessity

The amendment to Section 4970.06.1(d)(1)(A) is necessary to edit the existing regulation by making it more easy to follow and understand for federal applicants. Under the proposed revision the previous instructional format would be converted from a paragraph form to line item format. This revision would not alter the CEQA review process because all previously required steps and documentation remain. Instead, the process would be strengthened it by providing more clear and concise instructions for federal applicants.

4970.07 – Application Submission

Specific Purpose

Section 4970.07(b)(5) is amended to ensure programmatic interest are met and public funds are being spent appropriately.

Necessity

The amendment to Section 4970.07(b)(5) is necessary because current grant regulation language requests only certain applicants (Educational Institutions and Nonprofits) provide a written permission from a land manager for proposed projects on land the applicants do not own. However, recent project proposals have revealed that the stipulation should be more inclusive for all applicants. Under the proposed revision any applicants proposing projects and/or activities on land which they do not own would have to provide written permission from the land manager which would ensure the integrity of proposed project.

4970.08 – ELIGIBLE PROJECT COSTS

Specific Purpose

Section 4970.08(b)(3) is amended to provide guidance on what is acceptable in order to claim stipends for volunteers.

Necessity

The amendment to Section 4970.08(b)(3) is necessary to ensure consistency amongst applicants and to provide definitive guidance. Current regulatory language provides applicants the ability to create their own stipend rate according to a Grantees normal practice. However, due to the growth of the Program, the OHMVR Division has determined that in some instances stipend rates being claimed had become excessive for these “volunteer” positions. In order to meet the growing number of yearly applicants, the OHMVR Division has found that a fixed stipend rate for volunteer positions is justifiable. Under the proposed revision stipends for volunteers could be claimed as a per diem expense and only when volunteers are performing work in a remote location for three or more consecutive days. Proposed revision language includes a definition for a “remote location” and a reference for per diem rates.

Specific Purpose

Section 4970.08(b)(4) is amended to avoid confusion regarding acceptable claims for travel expenses and per diem.

Necessity

The amendment to Section 4970.08(b)(4) is necessary to clarify what policies and guidelines applicants must meet in order to claim travel expenses and per diems. Under the proposed revision new language would be inserted to further an applicant’s understanding on how to meet established programmatic rates. This revision would also ensure that public funds are being spent appropriately the travel reimbursement and per diem rates for state and federal agencies.

Specific Purpose

Section 4970.08(b)(10) is amended to provide applicants a clear and concise understanding of what is acceptable for transportation costs.

Necessity

The amendment to Section 4970.08(b)(10) is necessary to remove potential confusion from applicants. By making the parameters more definitive, it removes the possible misinterpretation by applicants making costs estimates and ensures public funds are being spent appropriately.

Specific Purpose

Section 4970.08(b)(12) is amended to clarify that rent/lease of facilities and/or equipment must be a direct cost.

Necessity

The amendment to Section 4970.08(b)(12) is necessary to avoid applicant confusion when creating their project cost estimates. Under the proposed revision new language would be inserted to emphasize that the rent and/or lease of facilities must be necessary for a project’s

completion in order to be allowed under direct costs. The proposed change would also maintain programmatic interest and ensure public funds are being spent appropriately.

Specific Purpose

Section 4970.08(b)(13)(A) is amended to inform applicants about the OHMVR Division's new policy regarding equipment purchases.

Necessity

The amendment to Section 4970.08(b)(13)(A) is necessary to assure that public funds are being spent in a more appropriate manner. The proposed new language would outright clarify that the OHMVR will not directly fund equipment purchase but rather provide funding for the rent/lease instead. Section 4970.08(b)(13)(A) would be followed by new subsections to guide for this policy shift. New subsection language would specify: the duration for the eligibility of rent/lease of equipment, the available option for equipment purchase following the performance period, a project amendment option to extend for the continual rent/lease of equipment; and, the maximum amount the OHMVR will allocate toward the rent/lease of equipment.

Specific Purpose

Section 4970.08(b)(13)(E) is amended to allow nonprofit applicants more flexibility for eligible equipment purchases.

Necessity

The amendment to Section 4970.08(b)(13)(E) is necessary to allow nonprofit applicants the ability to buy higher quality equipment. Current regulations restrict nonprofits to a \$15,000 per item. The OHMVR Division has read numerous comments that this restriction is too confining. By eliminating the \$15,000 per item limit, nonprofit applicants can request equipment that could be better suited for proposed projects/activities.

Specific Purpose

Section 4970.08(b)(13)(F) is amended to clarify programmatic parameters required for equipment purchases.

Necessity

The amendment to Section 4970.08(b)(3)(F) is necessary identify out what parameters are to be considered when requesting an equipment purchase for applicants. The proposed revision would ensure public funds are meeting programmatic interest.

4970.09 – INELIGIBLE PROJECT COSTS

Specific Purpose

Section 4970.09(b)(10) is amended to avoid confusion about where grant funding can be spent.

Necessity

The amendment to Section 4970.09(b)(10) is necessary due to continual confusion by applicants in past grant cycles who were not aware about the specific restriction to prohibit spending OHMVR Division grant fund money for projects/activities within State Parks.

Specific Purpose

Section 4970.09(b)(12) is amended to clarify the ability of the OHMVR Division to eliminate or reduce costs in applications.

Necessity

The amendment to Section 4970.09(b)(12) is necessary to include new regulatory language that would allow the OHMVR Division to refuse grant request for equipment repair or replacement with applicants who have exhibited gross negligence. Under the proposed revision the OHMVR Division will ensure that public funds are being spent appropriately.

4970.10.4 – AQUISITION

Specific Purpose

Section 4970.10.4(d)(1)(i) is amended to revise language regarding required documentation specific to acquisition projects.

Necessity

The amendment to Section 4970.10.4(d)(1)(i) is necessary to require that estimated property values are to be based on an appraisal on a competitive market analysis provided by a real estate professional. Under this proposed revision the OHMVR Division can determine that property values from applicants are legitimate and ensure public funds are being spent appropriately.

Specific Purpose

Section 4970.10.4(e)(2) is amended to revise language regarding what federal applicants can legally agree to for acquisition projects.

Necessity

The amendment to 4970.10(e)(2) is necessary to include language that is compatible with the statutory requirements federal agencies are obligated to follow. The revised language would ensure that federal applicants understand and acknowledge the OHMVR Divisions policy for acquisition projects which would maintain the regulatory consistency of the Program.

Specific Purpose

Section 4970.10.4(e)(3) is amended to identify the deadline for submitting documentation required for acquisition projects.

Necessity

The amendment to Section 4970.10.4(e)(3) is necessary to ensure that the OHMVR Division has adequate time to review and comment on the escrow prior

to the close of escrow. The proposed revision would allow the OHMVR Division to ensure regulatory compliance, which would ensure programmatic interests are met.

4970.17 – APPEAL PROCESS

Specific Purpose

Section 4970.17(b) is amended to identify the specific deadline for submitting an appeal.

Necessity

The amendment to Section 4970.17(b) is necessary to inform applicants about the time-zone specific deadline for appeals to be submitted to avoid confusion and allow for optimal public participation.

4970.23 – PAYMENT PROCESS

Specific Purpose

Section 4970.23 is amended to clarify the ability of the OHMVR Division to withhold approving and/or processing payments requests.

Necessity

The amendment to Section 4970.23 is necessary to clearly advise applicants that failure to provide the OHMVR Division with the required documentation can inhibit contract execution and/or funding for their project needs.

4970.24 – PROJECT CLOSEOUT

Specific Purpose

Section 4970.24.1(d) is amended to clarify when refunds are due back to the State.

Necessity

The amendment to Section 4970.24.1(d) is necessary to provide applicants a specific deadline to submit refunds to avoid confusion and ensure that public funds be returned in a timely manner to the State.

Subarticle 1.AUDITS

4970.25.1. Financial Audits

Specific Purpose

Section 4970.25.1 is amended to revise the name of the section to “Performance Audits”.

Necessity

The amendment to Section 4970.25.1 is necessary to better pertain to the article subsections content and to maintain consistency with the new proposed section 4970.25.3.

Specific Purpose

Section 4970.25.1(e) is amended to clarify the deadline for when refunds are due back to the State upon completion of an audit by the OHMVR Division.

Necessity

The amendment to Section 4970.25.1(e) is necessary provide applicants a specific deadline to submit refunds to avoid confusion and ensure that public funds be returned to the State within a specific time frame.

4970.25.3. Financial Audits

Specific Purpose

Section 4970.25.3 and its pursuing subsections are being proposed to provide insight about how the Department will conduct audits to the OHMVRD Grants and Cooperative Agreements Program.

Necessity

The proposed section 4970.25.3 is necessary to include within the Program regulations to make grantees aware of the Departments obligation to conduct audits of the Grants and Cooperative Agreements Program. The following subsections are to provide further clarification about how the Department will conduct the audit process of the Program over the course of a three year period.

**SPECIFIC PURPOSE AND NECESSITY FOR EACH PROPOSED
AMENDMENT TO DOCUMENTS INCORPORATED BY REFERENCE INTO
THE REGULATIONS**

The following provides the specific purpose and necessity for each proposed amendment to documents incorporated by reference.

SOIL CONSERVATION PLAN (12/11)

Specific Purpose

The Soil Conservation Plan (SCP) Part 1: Determine the Need for full SCP, is amended to include language to require applicants to identify projects that must comply with and complete a SCP.

Necessity

The addition of the SCP form is necessary to readily identify situations where a SCP is applicable and to avoid unnecessary work on the part of applicants when a SCP is not applicable. Currently, any project with ground disturbing activities is

required to submit a SCP. However, the SCP is designed to address erosion, sedimentation and soil loss in areas open to legal OHV recreation.

PAYMENT REQUEST FORMS

Specific Purpose

The Payment Request and Close Out forms are amended to create a more user-friendly form(s) that are consistent with the Project Cost Estimate.

Necessity

The Payment Request forms will reduce confusion for applicants by clearly identifying the match requirement on the form. A second Payment Request will be added and tailored specifically to LE applicants to reduce confusion. Successful applicants are frequently unsure of the match requirement and how to portray it on the existing Payment Request. Additionally, the Payment Request form will identify the categories used on the Project Cost Estimate to determine project costs. This will allow applicants to accurately track their expenditures.

GENERAL PROVISIONS

Specific Purpose

The number of Project Agreement General Provisions will be reduced from five separate forms to three.

Necessity

The reduction of Project Agreement General Provisions is necessary to lessen confusion for applicants and curtail unnecessary repetitive language. The Project Agreement General Provisions were originally designed to accommodate five different types of applicants: USFS, BLM, all other federal applicants, local agencies, and nonprofit organizations. In an effort to reduce superfluous forms and excessive paper use, the OHMVR Division determined that several forms with similar requirements and language could be combined. The proposed revisions would create only three different forms: USFS, all other federal agencies, and all other applicants. It is also believed that the reduced number of forms could potentially simplify needs assessments of applicants.

EVALUATION CRITERIA

Specific Purpose

A new evaluation question (#12) for Restoration projects will ensure that the Program is funding pertinent projects that promote responsible OHV recreation.

Necessity

The amendment to the evaluation criteria questions for restoration projects is necessary to prioritize projects that currently provide OHV recreation opportunities. In past grant cycle's applicants with land previously managed for

OHV recreation have applied for restoration projects with inordinate costs and in some cases prevented some lower scoring projects from receiving Program funds. In order to meet the State's best interest for the Program, the OHMVR Division is allowing applicants applying for restoration projects with the majority of the restoration being performed in the projects area caused by current OHV damage to be awarded more points than those that do not. The revision would prioritize projects that meet the programmatic goal of the OHMVR Division, to maintain existing, responsible OHV recreation opportunities throughout the State.

ECONOMIC IMPACT ANALYSIS

Existing law restricts eligible applicants to the Program to: cities, counties and districts; State agencies; federal agencies; federally recognized Native American tribes; educational institutions; and, nonprofit organizations. The proposed regulatory action would apply only to those applicants.

The Department finds that jobs will not be created or eliminated, new businesses will not be created and existing businesses will not be eliminated, nor will existing businesses be expanded because of the proposed action.

This regulatory action benefits the health and welfare of California residents by providing recreational opportunities in the State. This regulatory action benefits the state's environment by providing broader funding for resource protection and restoration activities.

MANDATES FOR SPECIFIC ACTIONS OR PROCEDURES OR SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposed amendments do not impose any mandates on agencies or organizations. Participation in the Program is voluntary.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Department did not rely upon any other technical, theoretical, or empirical studies, reports, or documents other than those incorporated by reference in proposing these amendments.

UNNECESSARY DUPLICATION OR CONFLICT WITH FEDERAL REGULATIONS

The Department has determined that the proposed rulemaking action does not unnecessarily duplicate or conflict with federal regulations contained in the Code of Federal Regulations. Participation in the Program is voluntary and is not addressed in the Federal Code of Regulations.

CONSIDERATION OF ALTERNATIVES

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.